LOANS FOR FENCING AND WATER PIPING BILL 1938

Legislative Assembly, 10 August 1938, pages 873-7

Second reading

The Hon. M. McINTOSH (Albert—Commis­sioner of Crown Lands)—This Bill repeals the Loans for Fencing and Water Piping Act, 1930, and those provisions of the Vermin Act, 1931-1936, which deal with the making of loans for fencing to landholders, and provides in lieu thereof new provisions under which loans for fencing will in future be made by the State Bank direct to landholders. The relating to these matters is now contained, in the two enactments mentioned. The Vermin Act. enable advances to be made for the purpose of supplying wire netting to landholders. This legislation was first enacted in 1890 and has been continued, with various alterations and modifications, up to the present time.

The Loans for Fencing Act was first passed in 1919, and enables occupiers of land to obtain advances for fencing material other than wire netting. In 1929 the provisions of this Act were extended to cover the supply of water piping. Both the Vermin Act and the Loans for Fencing and Water Piping Act work upon a similar basis. The occupier who desires to secure an advance for fencing or water piping is required to make a petition to the district council in whose area his land is situated. The district council, after considering the petition, forwards it to the State Bank, which may grant a loan to the district council. The district council is then required to purchase fencing material or water piping, as the case may be, and supply the required quantities to the petitioner. The petitioner is obliged to repay to the council the value of the fencing material or water piping supplied. These payments are spread over 20 years in the case of fencing material, and 15 years in the case of water piping, and bear interest at a small increase on the interest charged by the State Bank to the council. This increase is provided in order to recoup to the council its expenses in connection with the administration of the advances. In its turn the council is liable to the bank for repayment of the loans, so that under the present legislation the bank does not deal directly with the landholder, but the council is liable to the bank and the landholder liable to the council. In addition, under the Vermin Act, a vermin board may obtain a loan for landholders within its district in the same manner and on the same conditions as a council.

The Hon. R. S. Richards—Will the councils collect the administration costs?

The Hon. M. McINTOSH—The councils maintain that they are out of pocket because of the administration and have not been able to collect their rates. They found the position embarrassing to them. If a farmer has only a small amount available the councils wish to apply it to payment of their rates rather than to repayments to the Government.

The Hon. R. S. Richards—The virtue of the original legislation was that the councils would police it.

The Hon. M. McINTOSH—In good times they did, but when difficulties were accen­tuated it was more necessary that the councils should obtain their rates. In the case of a landholder holding land outside a district council district or the district of a vermin board the bank can make advances direct to the landholder. Under the present system a district council or vermin board is obliged to repay to the bank the amounts falling due under its loans, whether or not it obtains the repayment of its advances from the land­holders within its district, and in some cases it has occurred that the district councils have repaid to the bank amounts out of their revenues which have not been collected by them from the landholders.

Since the inception of this scheme for making advances the following amounts have been advanced:—Under the Vermin Act, a total of £461,553. Of this amount £390,861 has been repaid, and there is an outstanding balance of £70,691. In this balance are included the sum of £14,280 for arrears of principal and £2,528 for arrears of interest. Sixty councils have received loans under this Act, and the number of existing loans to individual landholders is 2,161. In the case of vermin boards the following loans are outstanding as between the State Bank and the vermin boards:—A total of £12,361 has been advanced, and of this £10,760 has been repaid, leaving an amount outstand­ing of £1,555. The arrears included in this last amount are £73, representing principal, and £39 representing interest. Five vermin boards have secured loans, and there are 22 existing advances to individuals.

Under the Loans for Fencing and Water piping Act a total of £293,039 has been advanced, £86,307 has been repaid, and there is an outstanding balance of £206,732, in which are included arrears of principal of £41,205 and arrears of interest of £17,412. Fifty-three councils have secured loans, and there are 3,624 advances in existence. It will be noted that these figures, which state the position as at June 30, 1938, represent the state of the accounts as between the State Bank and district councils and vermin boards. The amount of arrears outstanding is an indication that the present method of repayment is not a satisfactory one. Some councils appear to be. able to collect the amounts due and thus keep their accounts with the State Bank up to date, whilst other councils appear to be unable to do this. It is therefore considered that the present system whereby, in effect, the councils are made collecting agents for the State Bank and thus responsible for the collection of the amounts due, is not. the most satisfactory arrangement from the point of view of administration and is not a fair burden to place upon councils.

The Bill accordingly enacts new provisions dealing with the making of these loans and eliminates councils and vermin boards from the system under which these loans will be made. The Bill repeals the Loans for Fencing Acts and the relevant provisions of the Vermin Acts. There would appear to be no real reason for having separate enactments for these matters. Under the one Act a landholder can obtain an advance for fencing material other than wire netting, but if he wishes to obtain an advance for wire netting he must obtain it under the other Act. It is considered that all these matters can more conveniently be dealt with under the one enactment.

The Bill deals with two phases:—firstly, the position of past advances made by councils and vermin boards to occupiers, and secondly, with the making of future loans for fencing and water piping. As regards past advances it is provided by clause 21 that the bank will take over from councils and vermin boards all loans now outstanding. The landholders will, under this clause, be obliged to pay to the bank the same amounts which they are now liable to repay to the councils and vermin boards. These amounts will be subject to the same interest and other charges as they are now liable, so that, as regards the landholder, his position will be unchanged, except that instead of making repayments to the council or vermin board he will be liable to make repayments to the State Bank. It follows that the liability of councils and vermin boards as regards the collection or payment of future instalments of these loans will be determined.

As before mentioned, it has occurred that some councils have partly repaid their loans from revenue, but have not received corresponding repayments from the landholders. For instance, a council may owe the State Bank, say, £100 in respect of a certain loan. The council’s records, however, may show that there is £120 owing by the landholders. In these circumstances it follows that the council has paid £20 to the State Bank as it became due out of its general revenue. Under clause 21 the landholders in the case in question will be obliged to pay the bank the full amount of £120, but it is apparent that if this full amount of £120 is repaid the council should secure a recoup. Clause 22 accordingly deals with this matter. Obviously, the amounts to be taken into account are the arrears of principal outstanding at the commencement of the Act, and it is therefore provided that after the bank has recovered the amount, which at the commencement of the Act was outstanding as between the bank and the council, the Treasurer will have power to pay the excess to the council or vermin board.

The provisions of the Bill as regards future advances are substantially similar to those con­tained in the existing Acts with the exception that loans will in future be made direct by the bank and not through a council or vermin board.

In a few matters the existing provisions have, been altered or modified. The existing Act requires notice to be given to a mortgagee before a loan is granted to a landholder, and the mortgagee is given power to make representations against the granting of the loan. Clause 8 includes this provision, and also provides that, if the mortgagee does not consent to the making of the loan, the bank is not to grant the loan if it considers that the granting of the loan will prejudicially affect the security of the mortgagee. The Bill provides, as does the present Act, that a loan is to be a first charge on the land in respect of which it is made, and it is considered that the bank should not make a loan unless there is sufficient equity in the land so as not to prejudice the mortgagee ’s security, bearing in mind that the erection of the fence, or the laying down of the water piping, will increase the value of the holding.

Mr. Rudall—What does that mean exactly?

The Hon. M. McINTOSH—The bank will have to have regard to equity, and if it is satisfied that the granting of the loan will prejudice the equity of the mortgagee it will not grant it. On the other hand, it must consider that the granting of the loan will enhance the value of the property.

Mr. Budall—The equity of the loan is subject to the discretion of the State Bank.

The Hon. M. McINTOSH—That is so. The loan is to be a first charge, and the bank will not make the loan unless there is sufficient equity so as not to prejudice the equity of the mortgagee. The Hon. K. Richards—If the mortgagee does not agree the State Bank cannot make the loan?

The Hon. M. McINTOSH—That is so. The bank is not to make the loan if it will affect the security of the mortgagee. These provisions do not take away any rights held under the old law. The Bill provides that loans are to be made in the same way as under the present Act, namely, that the bank will supply the fencing material or water piping to the landholder, and he will be required to utilise it and provide the necessary labour for the purpose of putting it into position. In order, however, to simply the work of administration it is provided that loans for both water piping and fencing will be for the uniform period of 20 years, instead of 15 and 20 years as now provided. It frequently occurs that a person will obtain a loan for both objects, and it would obviously be more convenient in administration and to the landholder to be able to deal with these as one account. It is provided, as is now the case, that any loan made is to be a first charge on the land in question.

A new provision dealing with this matter is contained in clause 13. Objection is frequently taken to statutory provisions imposing charges upon land without being noted in the register book. There can be no doubt that any fixed charge upon land should be so noted, as otherwise a searcher may, after searching the title, have no notice that the land is subject to the charge. The existing Acts do not require a charge to be endorsed upon the register book although, as a matter of practice, the State Bank has taken steps to secure that charges on freehold land for fencing loans have been so indorsed, but this practice has not been extended to the register of Crown leases. Clause 13 deals with the matter by requiring all charges, whether on freehold or leasehold land, to be noted on the register. The clause also deals with loans made in the past and contains provisions requiring these charges, if not already noted, to be noted within six months of the commencement of the Bill. The noting of these charges on the past loans will be done without any cost to the landholders in question, but as regards endorsements of future loans, the applicant will be required to pay a. small fee. Provision is also made for the removal of the charge on repayment of the loan.

Other matters arising out of the charge upon the land and which are not now provided for are contained in clauses 14 and 15. If a landholder obtains a loan the whole of his land in respect of which the advance is made becomes charged with the loan. He may desire to sell part of the land but no machinery exists whereby the charge may be apportioned between the different parts of his holding. Clause 14 gives the bank in such circumstances power to apportion the charge between different parts of the holding. Cases also arise where landholders desire to shift a fence from the land charged with the loan to other land of the landholder, and again no machinery exists for this purpose. It is therefore provided by clause 15 that the bank may approve of such a proceeding in which case the land originally charged with the loan will cease to be subject to the charge and the land to which the fence is shifted will become subject to the charge.

Instalments of principal and interest will be payable as now, on February 1 in every year, but a new provision contained in clause 11 provides that if an instalment is not paid by May then penalty interest at the rate of one per centum in excess of the fixed rate will be charged. Under the present Act penalty interest at this rate is payable as from February 1. In many cases crop proceeds are not available at that date and the new provision will therefore give landholders an additional three months in which to pay instalments without becoming liable to the payment of penalty interest. Power is also given to the bank to remit this penalty interest in whole or in part. Clause 19 is also new and gives the bank power to capitalize any arrears of principal or interest.

These are the principal alterations to the existing Acts which are proposed by the Bill and they have been suggested in the light of administrative experience in dealing with loans under the present Acts. At the outset, when the Bill comes into operation, the work of changing from the present system to the proposed system will be considerable. Once these initial stages are passed, centralized administration by the State Bank should prove speedy and efficient, and councils will be relieved of obligations which, in many instances, have been regarded as placing undue burdens on local government authorities.

Mr. Abbott—What is the purpose of the Bill?

The Hon. M. McINTOSH—To take from the councils the collection and administration of the present legislation, which has become rather burdensome on some of them. In many instances, those who had had loans defaulted, and in some cases the councils met the pay­ments out of their own revenue. Very often a farmer would not have sufficient money to pay the instalment and interest on his loan, as well as his rates. Preservation being the first law of human nature, the clerk took the money for rates, and no payments were made to the Government.

The Hon. G. F. Jenkins—It has been said that advances were made to settlers even although they were not recommended.

The Hon. M. McINTOSH—That has been asserted, but I asked the State Bank for information on the point and I was informed that it was not so.

Mr. Abbott—If the councils cannot get the money how is the State Bank to get it?

The Hon. M. McINTOSH—The State Bank will not be so concerned with rates, and it will fall upon the farmer to satisfy the State Bank that he is not in a position to meet his payments. The administration of the legislation has become a heavy burden on some of the councils. When the. system was evolved it was not thought that councils would get into difficulties. I move the second reading.

The Hon. E. S. BICHABDS secured the adjournment of the debate.